International Law Cases in the Courts of the United States

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The Sabbatino Amendment was an important consideration in a recent case begun, however, in a state court, the Supreme Court of the State of New York. As most of the foreign cases fall under the jurisdiction of the District Court of the United States as a Court of the First Instance, this one incident arising in a state court may be permitted to be reviewed here because of the nature of the problem.

Trujillo-M v. Bank of Nova Scotia,
N.Y.L.J., September 30, 1966, p. 16-17

Trujillo, plaintiff in the case, was described by the court as "the brother of the late Rafael Trujillo Molina, quondam ruler of the Dominican Republic," now residing in Florida. The plaintiff sued the Bank of Nova Scotia in New York to recover an alleged deposit in defendant bank in the amount as alleged of $1,737,255. The bank admitted, and the court found, that the bank had such a deposit but the deposit was made in the Dominican branch of the defendant bank and was in pesos, the local currency of the Dominican Republic and the credit on the books of that bank had always been in pesos. In 1961 the Trujillo regime had been overthrown and the head of the government with members of his family were expelled from the country. On December 29 of that same year the Dominican constitution was amended to authorize confiscation of property, "In case of abuse or usurpation of power, or of any public office for personal enrichment or enrichment of others. . . ." Under this law, property, including the bank account of the plaintiff, was seized, and the bank under order paid the amount to the then existing regime. The plaintiff claimed he was entitled to sue in New York since the branch of a foreign bank doing business in the United States was not, as he claimed, a separate entity.

The court dismissed the action finding that there were two factors which governed the situation. One was the New York Banking Law

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Section 204-a(3)(a) and decisional precedents which required the application of the Act of State Doctrine. As to the first the court found that the Dominican branch of the Bank of Nova Scotia was subject to the laws of the Dominican Republic. As to the second the court cited the Supreme Court decision in *Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398, 425 (1964). In regard to the Sabbatino Amendment the court found it was unnecessary to make any independent determination because in the report of the Committee on Foreign Relations on the Foreign Assistance Act of 1965 (*S. Rep. No. 170,* 89th Cong., 1st Sess. 19) explains that the purpose of the Amendment was

"[T]o make it clear that the law does not prevent banks . . . from using the act of state doctrine as a defense to multiple liability upon any contract of deposit . . . where such liability has been taken over or expropriated by a foreign state. . . ."

Sardino v. Federal Reserve Bank of New York,
361 F.2d 106, *cert. denied,* October 10, 1966
[Unreported]

In the above cited case the constitutionality of the Foreign Assets Control Regulations as applied to Cuba under the relevant section of the Trading With the Enemy Act was upheld.

Here, a Cuban, residing in Havana, sued to recover a savings account in New York. This savings account was the proceeds of an insurance policy on the life of the plaintiff's son who had died in the United States. The bank, in refusing payment, pleaded the Cuban Assets Control Regulations, which the plaintiff then attacked on the basis of their constitutionality: that the regulations deprived him of his property without due process of law. On the question of whether the Fifth Amendment applied to foreigners the court said:

Throughout our history the guarantees of the Constitution have been considered applicable to all actions of the Government within our borders —and even to some without. Cf. *Reid v. Covert;* 354 U.S. 1, 5, 8, 77 S.Ct. 1222, 1 L.Ed.2d 1148 (1957). This country's present economic position is due in no small part to European investors who placed their funds at risk in its development, rightly believing they were protected by constitutional guarantees; today, for other reasons, we are still eager to attract foreign funds. . . . (p. 111)

The court found, however, that in dealing with the property of an alien the United States may consider the acts of the country of which he is a national. While the Constitution protects the alien from

arbitrary action by the U.S. government, it does not necessarily prevent reasonable response to actions by his own. In the course of the decision the court mentions evidence of action of the United States directed against property of aliens in protection of, or recompense to, American citizens affected by the acts of the government of those nationals whose property in the United States was affected. The following may properly be mentioned:

1. The Litvinov Agreement (see *U.S. v. Pink,* 315 U.S. 203 (1942)); 2. The Treaty of Berlin, ending World War I, 42 Stat. § 1939 (1921); 3. Treaties of peace with various countries, ending World War II (see 22 U.S.C. §§ 1631a, 1641a; 4. Seizure of Czechoslovakian-owned steel mill in 1947, 22 U.S.C. 1642a, etc., and 5. Registration of claims against Cuba, 22 U.S.C. § 1643.

Eminente v. Johnson, 361 F.2d 73 (D.C. 1966), *rehearing denied,* May 23, 1966

Here, a nonresident alien attempted to bring an action against the United States for damages to his property in a foreign country which were alleged to have been caused by the Armed Forces of the United States acting under the authority of the government of the United States. The Court of Appeals for the District of Columbia confirmed the lower court's action in dismissing the complaint on the ground that no direct suit can be permitted against the United States without its consent. The issue raised, therefore, was a nonjudiciable issue in the United States courts.

Persian Gulf Outward Frgt. Conf. v. Federal Maritime Com'n, 361 F.2d 80 (D.C. 1966)

The power of the Federal Maritime Commission was upheld to establish a second freight conference or rate making agreement where such a proceeding is alleged to be duplicative of an already existing conference and rate agreement. The rates of the new conference related to certain cargoes North and East of the Port of Aden. The court found:

The analysis of cargo carried, rates charged, and service to shippers supports the conclusion reached that "there is substantially no present or foreseeable competitive relation between the parties." . . . (p. 82)

With this as justification for the new conference the court also found that: "There is a potentially destructive competitive relation-

ship among the independent applicant carriers etc. . . ." (p. 83) and in general that the purpose was to prevent continuation of the destructive rate war.

Flota Maritima Browning de Cuba, Sociadad Anonima v. Snobl,
363 F.2d 733 (1966)

This case was but one decision in a long and complicated litigated matter. The important feature of this particular decision lies in the finding by the court that a foreign government in appearing generally in a case waives its immunity as a government, in respect of immunity from execution on government property. The court's comments on this feature are contained in two paragraphs:

The Czechoslovakian Ambassador, on behalf of the Republic of Cuba, now undertakes a fragmentation of the claim of execution immunity. We have held only, he says that a claim of the vessel's immunity from arrest and continued detention may not be asserted; immunity from sale, he contends, is another question.

[11] We think not. When Banco and Cuba entered their general appearance the claim of sovereign immunity from execution was waived; there were no explicit or implicit limitations. We held previously that because seizure was for the purpose of execution as well as jurisdiction, immunity in both aspects was waived when the general appearance was entered without reservation. (p. 737)

This case may properly be compared with the case of

John Hindle and John Romano v. Ray Phelps,
254 F.Supp. 1003 (S.D.N.Y. 1966)

The defendant-respondent had a contract with the United States Army Engineers to raise a certain wreck in New York Harbor. The plaintiff-libelants claimed that Phelps had breached a contract with them which was an agreement of joint venture to raise the said wreck. For jurisdictional purposes the libelant attached funds due from the United States Army Engineers due the respondent. The issue was the validity of the attachment. The court said:

The court finds that the funds, being government funds, may not be attached except upon government consent. *Chilean Line, Inc. v. United States,* 344 F.2d 757 (2d Cir. 1965). "In any case, . . . a writ of foreign

attachment was inappropriate because the United States has not waived its governmental immunity to garnishment . . . ." (p. 1003)

The Warsaw Convention

The principal matter considered in the case of

Lisi v. Alitalia-Linee Aeree Italiane,
253 F.Supp. 237 (S.D.N.Y. 1966)

is the Warsaw Convention and the necessary conditions under which it may be invoked.

The plaintiffs in a consolidated action sued for death, personal injuries, and property damages suffered by passengers in a crash of defendant's airplane in 1960. The airline pleaded a limitation of liability under the provisions of the Warsaw Convention. The court found that to take advantage of this limitation on liability the airline must deliver to a passenger a ticket and the baggage check. The Convention also requires that these two documents contain a statement that the transportation is subject to the rules relating to liability established by this Convention. The court held that the ticket and baggage check must be in such form as to give notice to the passenger of the limitation for the purpose of giving said passenger an opportunity to protect himself either by not taking the flight, or by entering into a special contract with the airline or taking out additional insurance. The court found that the form of ticket and baggage check issued did not give adequate notice to the passenger. The decision, therefore, was that the plaintiff's motion for partial summary judgment dismissing the defendants' affirmative defenses was granted, and the trial of the action was stayed, pending a decision of the Court of Appeals. The reasons the ticket and baggage check delivered were not adequate, in the opinion of the District Court, are expressed very forcefully in one paragraph as follows:

> The footnotes printed in microscopic type at the bottom of the outside front cover and coupons, as well as condition 2(a) camouflaged in Lilliputian print in a thicket of 'Conditions of Contract' crowded on page 4, are both unnoticeable and unreadable. Indeed, the exculpatory statements on which defendant relies are virtually invisible. They are ineffectively positioned, diminutively sized, and unemphasized by bold face type, contrasting color, or anything else. The simple truth is that they are so artfully camouflaged that their presence is concealed. (p. 243)

A case previously reviewed but prior to publication, has now the following citation:

F. Palicio y Compania, S.A. v. Brush,
256 F. Supp. 481 (1966)

The case as published bore in addition to the date when decided the statement "as amended September 21, 1966."